

EXHIBIT 26

**SUPERIOR COURT OF WASHINGTON
COUNTY OF KING**

John Warta,

Plaintiff(s),

v.

GST USA, Inc., et al.

Defendant(s).

NO. 99-2-02287-4SEA

NOTE FOR HEARING
SEATTLE COURTHOUSE HEARING ONLY
(Clerk's Action Required)

SEATTLE

TO: THE CLERK OF THE COURT and to all other parties per list on Page 2:

PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to note this issue on the calendar checked below.

Calendar Date: **October 15, 2004** Day of Week: **Friday**

Nature of Motion: **Motion for Reinstatement of Action**

DESIGNATED CALENDAR FOR JUDGE HEARINGS – SEATTLE

CASES ASSIGNED TO INDIVIDUAL JUDGES-Seattle

☒ Without oral argument (Mon-Fri) ☐ With oral argument Hearing

Date/Time:

If oral argument on the motion is allowed (LR 7(b)(2)), contact staff of assigned judge to schedule date and time before filing this notice.

Judge's Name: **Glenna Hall** Trial Date: **n/a**

*Working Papers: The judge's name, date and time of hearing must be noted in the upper right corner of the Judge's Copy.

Delivery Judge's copies to Judge's Mailroom at C203.

CHIEF CRIMINAL DEPARTMENT – Seattle in E1201

☐ Bond Forfeiture 3:15 p.m., 2nd Thur of each month

☐ Certificates of Rehabilitation, Weapon Possession (Convictions from Limited Jurisdiction Courts) 3:30 First Tues of each month.

CHIEF CIVIL DEPARTMENT – Seattle-(Please report to W764 for assignment)

☐ Extraordinary Writs (Show Cause Hearing) (LR 40(a)(2)(R)) 1:30 p.m. Tues/Wed – report to Room W855

☐ Supplemental Proceedings (1:30 pm Tues/Wed)

☐ Public Use and Necessity Hearing (1:30 p.m. Tues)

☐ DOL Stays 1:30 p.m. Tues/Wed

☐ Motions to Consolidate (without oral argument)

Non-Assigned Cases:

☐ Certificates of Rehabilitation (Employment) 1:30 p.m. Tues/Wed

☐ Dispositive Motions and Revisions (1:30 pm Tues/Wed)

☐ Non-Dispositive Motions (without oral argument)

Delivery working copies to Judge's Mailroom, Room C203. In upper right corner of papers write "Chief Civil Department" and date of hearing.

Signature: 

Print/Type Name: **Thomas D. Adams** WSBA # 18470 (if attorney)

Address: **Bullivant Houser, Bailey, 1601 Fifth Ave., Ste. 2400** City, State, Zip: **Seattle, WA 98101**

Attorney for: **Defendants GST USA, Inc., GST Telecom, Inc., and GST Telecommunications, Inc.**

Telephone: **(206) 292-8930**

Date: **10/06/04**

DO NOT USE THIS FORM FOR FAMILY LAW, EX PARTE OR RALJ MOTIONS.

Case: Warta v. GST
For: Motion for Reinstatement

No.: 99-2-02287-4SEA
Dated: October 15, 2004

LIST NAMES, ADDRESSES & TELEPHONE NUMBERS OF ALL PARTIES REQUIRING NOTICE

Name: Peter H. Glade
WSBA No. 15681
Markowitz, Herbold, Glade & Mehlhaf, P.C.
1211 SW Fifth Ave., Ste. 3000
Portland, OR 97204-3730
Phone: (503) 295-3085 #139
Fax: (503) 323-9105

Attorney for: Plaintiff

Name: Christopher H. Kent
WSBA No. 31399
Christopher H. Kent
Kent Curtis LLP
1500 SW Taylor St.
Portland, OR 97205
Phone: (503) 220-0717
Fax: (503) 220-4299

Attorney for: Plaintiff

IMPORTANT NOTICE REGARDING CASES

Party requesting hearing must file motion & affidavits separately along with this notice. List names, addresses and telephone numbers of all parties requiring notice (including GAL) on this page. Serve a copy of this notice, with motion documents, on all parties.

The original must be filed at the Clerk's Office not less than six court days prior to requested hearing date, except for Summary Judgment Motions (to be filed with Clerk 28 days in advance).

THIS IS ONLY A PARTIAL SUMMARY OF THE LOCAL RULES AND ALL PARTIES ARE ADVISED TO CONSULT WITH AN ATTORNEY.

The SEATTLE COURTHOUSE is in Seattle, Washington at 516 Third Avenue. The Clerk's Office is on the sixth floor, room E609. The Judge's Mailroom is Room C203.

3417647.1

HONORABLE GLENNA HALL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JOHN WARTA,

Plaintiff,

v.

GST USA, INC., a Delaware corporation;
GST TELECOM, INC., a Delaware
corporation and GST
TELECOMMUNICATIONS, INC., a
Canadian corporation,

Defendants.

GST USA, INC., a Delaware corporation;
GST TELECOM, INC., a Delaware
corporation and GST
TELECOMMUNICATIONS, INC., a
Canadian corporation,

Counterclaim Plaintiffs,

JOHN WARTA and his marital community;
CLIFFORD SANDER and his marital
community,

Counterclaim Defendants.

No. 99-2-02287-4SEA

GST DEFENDANTS' MOTION FOR
REINSTATEMENT OF ACTION

I. RELIEF REQUESTED

Defendants GST USA, Inc., GST Telecom, Inc., and GST Telecommunications, Inc.
("GST") requests that this Court reinstate this action following an improper administrative
dismissal under KCLR 41(b)(2)(A). The action was stayed under 11 U.S.C. § 362 on May

23, 2000, yet the Clerk dismissed the action without prejudice and without notice to the parties on December 20, 2000. Because the action was stayed by GST's bankruptcy, such dismissal was error. Consequently, GST requests this Court to reinstate the action.

II. FACTS

Plaintiff Warta filed the original lawsuit on January 25, 1999. GST answered and filed a counterclaim on February 23, 1999. Trial was scheduled for June 12, 2000. *See Adams Dec., Ex. A.* On May 17, 2000, GST sought protection from creditors by filing an action under Chapter 11 of the United States Bankruptcy Code. *See Adams Dec., Ex. B.* Thereafter, GST filed a Notice of Bankruptcy filing in this Court on May 23, 2000, which was duly served on counsel of record for the parties. *See Adams Dec., Ex. B.*

Without notice to GST, and presumably without notice to any other party, the King County Superior Court Clerk entered a *Clerk's Order of Dismissal* without prejudice on December 20, 2000. *See Adams Dec., Ex. A.* GST never received the *Clerk's Order of Dismissal* prior to its existence being called to counsel's attention in the course of GST's bankruptcy proceedings. *See Adams Dec.,* In fact, the first time GST's Seattle counsel reviewed or saw the *Clerk's Order of Dismissal* was September 28, 2004. *See Adams Dec.,* ¶3.

III. ISSUE PRESENTED

Should the Court reinstate King County Superior Court Cause Number 99-2-02287-4 when the Court Clerk dismissed the action without prejudice despite GST's pending bankruptcy and GST's filing of a *Notice of Bankruptcy* Filing?

IV. LEGAL ARGUMENT

King County Superior Court Cause Number 99-2-02287-4 must be reinstated. 11 U.S.C. § 362 provides for a stay when a party has filed for bankruptcy protection. Pursuant to 11 U.S.C. § 362, on May 23, 2000, counsel for GST filed a Notice of Bankruptcy filing stating "all actions against the debtors or any of the assets of the debtors are stayed." *See*

1 *Adams Dec., Ex. B.*

2 The Clerk's administrative dismissal was undertaken pursuant to KCLR 41(b)(2)(A)
3 and RCW 4.56.120 which state:

4 An action in the superior court may be dismissed by the court
5 and a judgment of nonsuit rendered in the following cases:

6 ***

7 (4) Upon its own motion, when, upon the trial and before the
8 final submission of the case, the plaintiff abandons it.

9 RCW 4.56.120(4)(emphasis added).

10 KCLR 41(b)(2)(a) provides:

11 (b) Involuntary Dismissal.

12 (2) Dismissal on Clerk's Motion.

13 (A) Failure to Appear for Trial. If the court has not been
14 previously notified that the trial is no longer necessary, an order
15 of dismissal will be entered on the date the trial is to be
16 commenced. If the court has been notified and the case has not
17 been disposed of within 45 days after the scheduled trial date,
18 the case will be dismissed without prejudice on the clerk's
19 motion without prior notice to the parties, unless the parties
20 have filed a certificate of settlement as provided in LR 41(e)(3).
21 **The clerk will mail all parties or their attorneys of record a
22 copy of the order of dismissal.**

23 (emphasis added).

24 Here, there was no abandonment of any claim by any party and the Clerk had no
25 discretion or even right to dismiss the case. Moreover, pursuant to the Local Rule, the Clerk
26 should have mailed the Order of Dismissal to the parties or their attorneys. Because that did
not occur, GST never even had an opportunity to cure the problem before now.

27 **V. CONCLUSION**

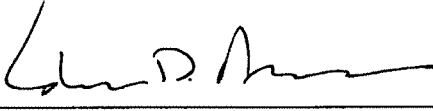
28 Manifest injustice will result unless the above-captioned matter is reinstated. The
29 Clerk lacked legal authority to administratively dismiss the case while the automatic stay is
30 in effect and compounded the error by failing to follow the Local Rule requiring that all

1 parties by mailed a copy of the dismissal order.

2 GST respectfully requests that its Motion for Reinstatement be GRANTED. A
3 proposed order accompanies this Motion.

4 DATED this 6th day of October, 2004.

5 Bullivant Houser Bailey PC

6
7 By 

8 Thomas D. Adams, WSBA #18470
Kristi Favard, WSBA #34419

9 Attorneys for Defendants GST USA, Inc., GST Telecom,
10 Inc., and GST Telecommunications, Inc.

11 3417641.1

HONORABLE GLENNA HALL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JOHN WARTA,

Plaintiff,

v.

GST USA, INC., a Delaware corporation;
GST TELECOM, INC., a Delaware
corporation and GST
TELECOMMUNICATIONS, INC., a
Canadian corporation,

Defendants.

GST USA, INC., a Delaware corporation;
GST TELECOM, INC., a Delaware
corporation and GST
TELECOMMUNICATIONS, INC., a
Canadian corporation,

Counterclaim Plaintiffs,

JOHN WARTA and his marital community;
CLIFFORD SANDER and his marital
community,

Counterclaim Defendants.

No. 99-2-02287-4SEA

DECLARATION OF THOMAS D.
ADAMS IN SUPPORT OF GST
DEFENDANTS' MOTION FOR
REINSTATEMENT

I, THOMAS D. ADAMS, declare and state as follows:

1. I am over the age of 18 and am competent to testify as to the facts stated
herein.

2. I represented Defendants GST USA, Inc., GST Telecom, Inc., and GST

1 Telecommunications, Inc. ("GST") in the above matter and have personal knowledge of all
2 matters attested to in this declaration.

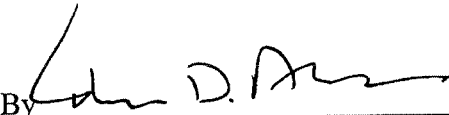
3 3. Attached hereto as *Exhibit A* is a true and correct copy of the *Clerk's Order of*
4 *Dismissal* entered into in this matter. I first obtained it on September 28, 2004. I previously
5 was unaware of its existence and was not served with a copy when it was issued.

6 4. Attached hereto as Exhibit B is a true and correct copy of the Notice of
7 Bankruptcy Filing, staying the action, which I filed and caused to be served on or about May
8 23, 2000.

9 5. To the best of my knowledge, GST never received the Order of Dismissal or
10 invoice from the King County Office of Finance for a non-compliance fee.

11 I hereby affirm subject to penalty of perjury under the laws of the State of
12 Washington that the foregoing is true and correct to the best of my information and belief.

13 DATED: October 6, 2004, at Seattle, King County, Washington.

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16 By 
THOMAS D. ADAMS

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EXHIBIT A

FILED
KING COUNTY, WASHINGTON

DEC 20 2000

SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

WARTA

Plaintiff/Petitioner,

vs.

GST USA INC ET AL

Defendant/Respondent.

NO. 99-2-02287-4 SEA

CLERK'S ORDER OF DISMISSAL

(CLOD)

I. BASIS

Pursuant to R.C.W. 4.56.120(4), the Court may dismiss an action abandoned by the plaintiff upon trial. Pursuant to King County Local Rule 41(b)(2)(A), if the case has not been disposed of within 45 days after the scheduled trial date, the case will be dismissed without prejudice on the Clerk's motion without prior notice to the parties.

1.1 This case was set for trial on 6/12/00

1.2 More than forty five (45) days have passed since the scheduled trial date, the Clerk has researched the legal file and no final dispositive document/order has been received.

II. ORDER

THEREFORE, IT IS ORDERED that this case is dismissed without prejudice. (This dismissal does not affect divorces, determinations of parentage, child support orders, judgments, or other orders entered prior to the filing of the latest action.)

An invoice from the King County Office of Finance for a non-compliance fee will be mailed to you within 30 days of this Notice, pursuant to King County Code 4.71.050.

Date: DEC 20 2000


Presiding Judge

Presented By:
PAUL L. SHERFEY
KING COUNTY SUPERIOR COURT CLERK
By: Nestor Tamayao, Deputy Clerk
Case Management : (206) 296-7872

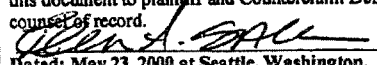
Assigned to Department 10

EXHIBIT B

CERTIFICATE OF SERVICE

THE HONORABLE GLENNA HALL

I certify under penalty of perjury under the laws of the State of Washington that on this day I caused to be delivered via Facsimile and Federal Express, next day delivery, a copy of this document to plaintiff and Counterclaim Defendants' counsel of record.


Dated: May 23, 2000 at Seattle, Washington.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

JOHN WARTA,

No. 99-2-02287-4SEA

Plaintiff,

NOTICE OF BANKRUPTCY FILING

v.

**GST USA, INC., a Delaware corporation;
GST TELECOM, INC., a Delaware
corporation and GST
TELECOMMUNICATIONS, INC., a
Canadian corporation,**

Defendants.

**GST USA, INC., a Delaware corporation;
GST TELECOM, INC., a Delaware
corporation and GST
TELECOMMUNICATIONS, INC., a
Canadian corporation,**

Counterclaim Plaintiffs,

**JOHN WARTA and his MARITAL
COMMUNITY and CLIFFORD SANDER
and his MARITAL COMMUNITY**

Counterclaim Defendants.

1 To: Clerk of Court

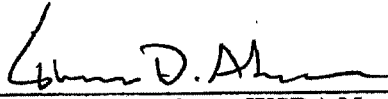
2 And To: Plaintiff John Warta and Counterclaim Defendants John Warta, Clifford
3 Sander, and their counsel of record

4 PLEASE TAKE NOTICE that GST USA, Inc., GST Telecom, Inc., and GST
5 Telecommunications, Inc., filed for protection under Chapter 11 of the United States
6 Bankruptcy Code on May 17, 2000. The Petition was filed in the U.S. Bankruptcy Court for
7 the District of Delaware. The case numbers, respectively, are 00-01984, 00-01982 and 00-
8 01983. The Debtor in Possession's counsel for each debtor is David Heller of Latham &
9 Watkins, 233 South Wacker Drive, Suite 5800, Chicago, Illinois 60606-6401, and their
10 telephone number is (312) 876-7700.

11 Pursuant to 11 U.S.C. § 362, all actions against the debtors or any of the assets of the
12 debtors are stayed.

13 DATED this 23rd day of May, 2000.

14 BULLIVANT HOUSER BAILEY
15 A Professional Corporation

16 By 
17 Thomas D. Adams, WSBA No. 18470

18 WILSON SONSINI GOODRICH & ROSATI
19 Professional Corporation
20 David S. Steuer (Pro Hac Vice)
21 Jared L. Kopel (Pro Hac Vice)
22 Douglas J. Clark (Pro Hac Vice)
23 650 Page Mill Road
24 Palo Alto, CA 94304-1050
25 Telephone: (650) 493-9300
26 Facsimile: (650) 565-5100

Attorneys for Defendants and Counterclaim Plaintiffs
GST USA, Inc., GST Telecom, Inc., and GST
Telecommunications, Inc.

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HONORABLE GLENNA HALL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JOHN WARTA,

Plaintiff,

v.

GST USA, INC., a Delaware corporation;
GST TELECOM, INC., a Delaware
corporation and GST
TELECOMMUNICATIONS, INC., a
Canadian corporation,

Defendants.

GST USA, INC., a Delaware corporation;
GST TELECOM, INC., a Delaware
corporation and GST
TELECOMMUNICATIONS, INC., a
Canadian corporation,

Counterclaim Plaintiffs,

JOHN WARTA and his marital community;
CLIFFORD SANDER and his marital
community,

Counterclaim Defendants.

No. 99-2-02287-4SEA

ORDER GRANTING GST
DEFENDANTS' MOTION FOR
REINSTATEMENT OF ACTION

PROPOSED

THIS MATTER having come on regularly for hearing before the undersigned Judge
of the above-entitled Court, upon Defendants GST USA, Inc., GST Telecom, Inc., and GST
Telecommunications, Inc.'s Motion for Reinstatement of Action, and the Court having
reviewed the pleadings, and having heard argument of counsel, and being otherwise fully

1 advised, NOW, THEREFORE,

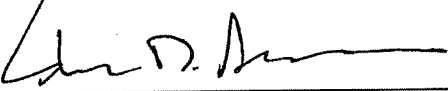
2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that GST Defendants'
3 Motion for Reinstatement of Action is granted. Cause number 99-2-02287-4SEA shall be
4 revived and stayed and then shall remain pending on the Court's docket in the same status as
5 existed on December 20, 2000, with all claims and defenses of all parties' preserved as they
6 then existed, pending further order of this Court.

7 SIGNED this _____ day of October, 2004.

8
9
10 _____
Honorable Glenna Hall

11 Presented By:

12 Bullivant Houser Bailey PC

13
14 By 

15 Thomas D. Adams, WSBA #18470
Kristi Favard, WSBA #34419

16 Attorneys for Defendants GST USA, Inc.,
17 GST Telecom, Inc., and GST Telecommunications, Inc.

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HONORABLE GLENNA HALL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JOHN WARTA,

Plaintiff,

v.

GST USA, INC., a Delaware corporation;
GST TELECOM, INC., a Delaware
corporation and GST
TELECOMMUNICATIONS, INC., a
Canadian corporation,

Defendants.

GST USA, INC., a Delaware corporation;
GST TELECOM, INC., a Delaware
corporation and GST
TELECOMMUNICATIONS, INC., a
Canadian corporation,

Counterclaim Plaintiffs,

JOHN WARTA and his MARITAL
COMMUNITY and CLIFFORD SANDER
and his MARITAL COMMUNITY

Counterclaim Defendants.

No. 99-2-02287-4SEA

CERTIFICATE OF SERVICE

The undersigned certifies that on Wednesday, October 06, 2004, I caused to be served:

1. Note for Hearing;
2. GST Defendants' Motion for Reinstatement of Action;

3. Declaration of Thomas D. Adams in Support of GST Defendants' Motion for Reinstatement;

4. Proposed Order Granting GST Defendants' Motion for Reinstatement of Action;

And this document to:

Peter H. Glade
Markowitz, Herbold, Glade &
Mehlhaf, P.C.
1211 SW Fifth Ave., Ste. 3000
Portland, OR 97204-3730
Phone: (503) 295-3085 #139
Fax: (503) 323-9105

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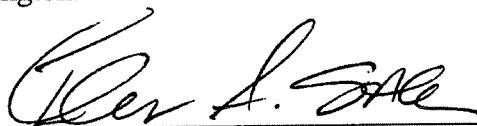
via hand delivery via ABC Legal Messengers.
via Fed Ex, overnight Delivery
via facsimile.

Christopher H. Kent
Kent Curtis LLP
1500 SW Taylor St.
Portland, OR 97205
Phone: (503) 220-0717
Fax: (503) 220-4299

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via hand delivery via ABC Legal Messengers.
via Fed Ex, overnight Delivery
via facsimile.

I declare under penalty of perjury under the laws of the State of Washington on
Wednesday, October 06, 2004, at Seattle, Washington.


Elen A. Sale

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